A Little Birdy Told Me About Your Warrants

Avi Zajac

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hi@localhost:~$ whoami
avi
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hi@localhost:~$ echo I AM NOT A LAWYER
I AM NOT A LAWYER
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Background && History of NSLs

National Security Letter (NSL)

An administrative subpoena issued to bypass the judicial system, "used to obtain information from companies as part of national security investigations" (EFF)

What can be requested?

Non-content information.
Name, address, transaction records (date, time, length of calls), length of service

So?

The FBI, through NSLs, issue broad requests for information on targets including "communities of interest" that enables them to request information to expand mass surveillance and data collection on targets twice, or even further removed from the original target

1978   First provisional NSL created under Right To Financial Privacy Act (RFPA) as part of the Financial Institutions Regulatory And Interest Rate Control Act of 1978

1986   RFPA amended
Electronic Communications Privacy Act (ECPA) passed by Congress allowing FBI to issue NSLs (U.S.C. Section 2709 of Title 18)

1993   An amendment removed the restriction of requiring their target to be a foreign power or an agent of a foreign power

2000

8500 NSLs were issued

2001

October 26, President George W. Bush signed the USA PATRIOT Act of 2001 into law, in section 505, loosening the standards for issuing NSLs

2004

56,507 NSLs were issued, each accompanied by a categorical and permanent gag order
April 24, Doe v. Ashcroft filed by ACLU on behalf of an ISP owner

2004

September, Doe v. Ashcroft, Judge Victor Marrero struck down Section 2709 in the USA PATRIOT Act along with the associated gag provision

2005

Congress amended Section 2709 of Title 18 of the US Code in the USA PATRIOT Improvement and Reauthorisation Act of 2005
- Allowed for limited judicial review of an NSL by a judge only if the recipient files for a legal challenge against the NSL

2007 ACLU and NYCLU successfully argued Congress had not addressed all of the deficiencies in amended Section 2709, Judge Victor Marrero agreed and struck down the provision

2008 US Court of Appeals for the Second Circuit affirmed most of the District Court's decision

2010 FBI partially lifted the gag order in originally Doe v. Ashcroft, Nicholas Merrill of Calyx Internet Access finally revealed

2013 President Barack Obama's Intelligence Review Group reported average ~60 NSLs issued daily
February, Cloudflare served NSL-12-358696, EFF takes case
July, FBI rescinds NSL and withdraws request for information.

2014 Ken Carter of Cloudflare meets with a key Capitol Hill staffer who dismissed concerns

2017 With the gag order removed, Cloudflare finally reveals in their transparency report they had received an NSL in 2013.

Background && History of Warrant Canaries

Canaries in
coal mines

1911-1986

What is a warrant canary?

An untested legal theory where providers (traditionally) state publicly they have not received a NSL
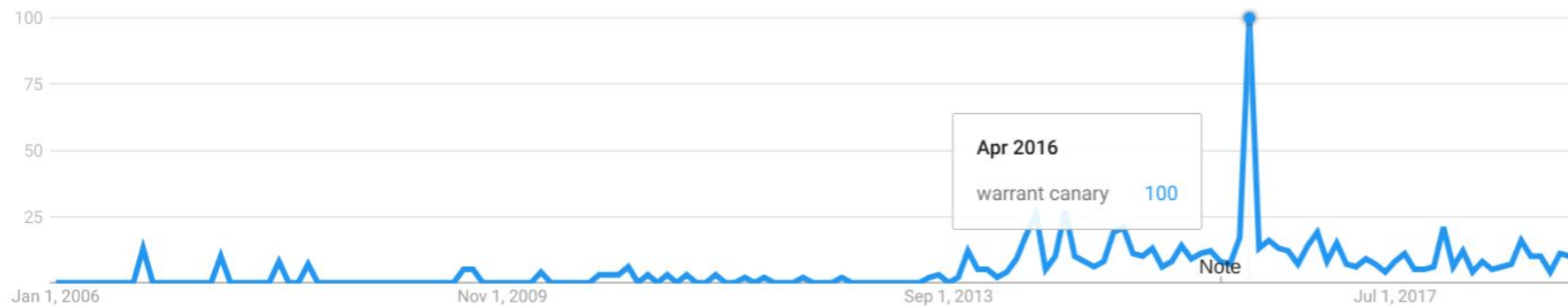
2006

rsync.net, the first commercial provider to begin publishing a warrant canary

2016

Reddit removes their warrant canary (first published in their 2014 transparency report) in their 2015 transparency report

Warrant canary search history
(Google, 17 January 2019)

Warrant Canary Projects

Canary Watch

Launched in March 2015 by a coalition of various groups as a site for tracking warrant canaries

Discontinued in May 2016

Macaron Canary

Create generic warrant canary examples specifying provider's risk information; Overall timeline of NSLs, warrant canaries; Profiles of existing providers with warrant canaries categorised by type and based off of web scraping and user input to create warrant canary statuses: N/A, stable, lean stable, lean unstable, unstable)

Warrant Canary Criticism

Schneier on Security

Blog >

Reddit's Warrant Canary Just Died

Reddit has received a National Security Letter.

I have long discounted warrant canaries. A gag order is serious, and this sort of high-school trick won't fool judges for a minute. But so far they seem to be working.

Now we have another question: now what? We have one piece of information, but not a very useful one. We know that NSLs can affect anywhere from a single user to millions of users. Which kind was this? We have no idea. Is Reddit fighting? We have no idea. How long will this go on? We don't know that, either. When I think about what we can do to be useful here, I can't think of anything.

Tags: National Security Letters, national security policy, transparency

Posted on April 1, 2016 at 3:16 PM • 68 Comments

They might be illegal;
Not clear if it's possible for the government to legally require companies to lie about requests;
Minor events (e.g. delay of updating) and lack of information may lead to it being misinterpreted and cause unnecessary fear;
Companies could purposely lie about requests or employee(s) responsible may be unaware about request(s);
Lots of varying formats!

Or it's okay to not have a warrant canary!

...if you don't collect unnecessary and sensitive user data

Options and What People, Companies, and Organisations Can Do

The future I'd love to see though I'm Not A Lawyer

Everyone should have a warrant canary available easily that is specific to their specific risks of compromise in a transparency report in a standardised way that is archived;
Don't collect data that isn't relevant to a product for consumers;
Sell products at a higher cost without selling out and/or collecting user data;
If you receive a NSL+gag order challenge the legality of it;

This is the future I'd love to see very much and I'm Still Not A Lawyer

Anyone that has any type of database/collection of user data and information should limit the type of data collected to reduce the exposure of second, third, and further parties removed from the target of a NSL

This is still the future I'd love to see very much and I'm Still Not A Lawyer

The work being done to challenge NSLs+gag orders by many such as the EFF, ACLU, NYCLU, take up a lot of their resources due to very lengthy fights so donate to support their efforts to protect our privacy;
Petition and speak with members of Congress to reform the laws surrounding NSLs+gag orders

This is still the future I'd like to see very very much and I'm Still Not A Lawyer

Thank you! 🐰✨

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